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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/774,438	02/10/2004	Terra Simmons-Gettig	22271.00	1700

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EXAMINER

PATTERSON, MARIE D

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 01/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/774,438

Applicant(s)

SIMMONS-GETTIG, TERRA

Examiner

Marie Patterson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 4,10-13 and 16-19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3,5-9,14 and 15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 2/10/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

1. It is noted that the originally filed set of claims included two claims numbered 13. For Examination purposes previously numbered claims 13 (second occurrence)-18 have been renumbered as 14-19. Correction in any response to this office action is requested.

Election/Restrictions

1. Applicant's election with traverse of Group VI, figure 6 in the reply filed on 12/19/05 is acknowledged. The traversal is on the ground(s) that the search and examination of an additional 7 species would not be a serious burden on the Examiner. This is not found persuasive because the search and examination of features and claims directed towards an additional 7 embodiments/species would clearly be a burden on the Examiner.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 4, 10-13, and 16-19 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 12/19/05.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 3, 5, and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Neal (2507991).

Neal shows a shoe comprising a sole with an upper portion (14), a base (15), a heel (15a), and a hollow compartment (16) with a lock and key (24 and 27) to retain the closure of the opening to the hollow compartment closed. In reference to the height of the base, it is noted that Neal states that the shoe is a high wedge heel-platform (column 1 lines 35-40) which inherently and conventionally has a height of at least 1 inch.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-3 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weitzner (3328900).

Weitzner shows a shoe comprising a sole with a base (front portion at 104 and 105), a separate heel (102), a compartment (110) in the base (shown in figures 1-4) substantially as claimed except for the exact height of the base. It is well known and conventional to make the sole of a shoe different heights, including a platform height of over 1 inch. It would have been obvious to make the base over 1 inch in height to give the shoe a conventional platform look/style.

In reference to claim 14, Weitzner as modified above discloses the claimed invention except for the exact material for the base. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a light weight synthetic material for the base, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

7. Claims 1, 3, 5, 6, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Neal.

Neal shows a shoe substantially as claimed except for inarguendo the exact height of the base. It is well known and conventional to make platform heels/wedges/bases over 1 inch in height and therefore it would have been obvious to make the base of Neal greater than one inch to provide a desired style/height.

In reference to claim 14, Neal as modified above discloses the claimed invention except for the exact material for the base. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a light weight synthetic material for the base, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

8. Claims 7-9, 14, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Neal in view of either Potts (6094844) or Ruff (5921008).

Neal shows a shoe substantially as claimed except for a drawer. Either Potts or Ruff teaches providing a drawer (36 or 60) to hold items which slides into a compartment in a

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shoe sole. It would have been obvious to provide a drawer as taught by either Potts or Ruff in the shoe of Neal to allow the user easy access to items placed in the compartment in the sole.

In reference to claim 14, Neal as modified above discloses the claimed invention except for the exact material for the base. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a light weight synthetic material for the base, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

1. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). Other useful information can be obtained at the PTO Home Page at www.uspto.gov.

In order to avoid potential delays, Technology Center 3700 is encouraging FAXing of responses to Office Actions directly into the Center at (572)272-8300 **(FORMAL FAXES ONLY)**. Please identify Examiner Marie Patterson of Art Unit 3728 at the top of your cover sheet.

Any inquiry concerning the MERITS of this examination from the examiner should be directed to Marie Patterson whose telephone number is (571) 272-4559. The examiner can normally be reached from 6AM - 4PM Mon-Wed.


Marie Patterson
Primary Examiner
Art Unit 3728